



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: FOP - 175482

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on July 12, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Marinette County Department of Human Services regarding a determination that the petitioner had been overpaid FoodShare benefits (FS), a hearing was held on August 17, 2016, by telephone.

The issue for determination is whether petitioner's appeal was timely filed.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

;

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [REDACTED], Income Maintenance Worker  
Marinette County Department of Human Services  
Wisconsin Job Center Suite B  
1605 University Drive  
Marinette, WI 54143

**ADMINISTRATIVE LAW JUDGE:**

Kenneth D. Duren  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Florence County. He is the husband of [REDACTED], and he was an adult member of a FS household headed by [REDACTED] in the period of February – June, 2013.

**FINDINGS OF FACT**

2. On December 4, 2013, the Department, or its agent, sent a written notice of negative action to the petitioner.
3. The negative action in this case was a determination that the petitioner was liable for an overpayment of \$2,579.93 of Food Share benefits from February 4 - June 30, 2013, FS Overpayment Claim No. [REDACTED]. The claim was premised upon the finding of a Client Error in [REDACTED] and [REDACTED] failing to report unearned income [REDACTED] was receiving.
4. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on July 12, 2016, contesting the overpayment determination of December 4, 2013.
5. The petitioner and his wife, [REDACTED], both admitted at the hearing that they received the Notification of FS Overissuance and worksheets issued on December 4, 2013, showing how the overpayment was computed; and that neither of them appealed that decision within 90 days of the date of the notice or at any time prior to July 12, 2016.
6. In fact, the petitioner also agreed at the hearing that [REDACTED] previously admitted to a Food Share Intentional Program Violation arising from the same overpayment of FS, because she had failed to report that [REDACTED] was receiving Unemployment Compensation income from the State of Michigan in the overpayment period. He further confirmed that [REDACTED] signed a waiver of an administrative disqualification hearing and she was individually disqualified for one year effective February, 2014. See, Exhibit Nos. 10, 11, 12.
7. In addition, the petitioner and her husband agreed to allow the agency to recoup the overpayment described in Finding #3, above from ongoing FS benefits, and to date, the agency has recovered at least \$1,450 of the FS overpayment as of July 13, 2016. See, Exhibit No. 13.
8. At the hearing, the petitioner and his wife requested that the Administrative Law Judge grant a hardship waiver of the balance due on the overpayment of \$1,129.93. Neither ever submitted a formal request to the Department or the county agency for such a hardship waiver.

### DISCUSSION

A hearing to contest a negative action taken against a FoodShare recipient, like a determination that a FS household has been overpaid FS, must be filed within 90 days of the effective date of the negative action. Here, that action was taken on December 4, 2013, when the agency issued a Notification of FS Overissuance to the petitioner and spouse, and related computational worksheets.

The petitioner and [REDACTED], his wife, fully admitted that they received the Notification and did not appeal at any time prior to July 13, 2016. Further, the record establishes that the petitioner has waived any right to contest the overpayment by both agreeing to pay the entire debt by recoupment and subsequently paying \$1,450 by said recoupment method, leaving \$1,129.93. The petitioner and his wife now ask for a hardship waiver to avoid paying the rest due, stating that they have financial difficulties without more enumeration.

The petitioner's appeal contesting the FS overpayment is untimely, as his wife's appeal was determined to be untimely in the companion case and decision. He has not alleged that any computations of payments and the balance due are in error either. Finally, I lack any authority to grant a so-called hardship waiver as sought here. No federal or state law provides an administrative law judge of the Division the authority to do so, and I lack the powers of a court of equity. See, *Browne v. Milwaukee Board of School Directors*, 83 Wis.2d 316, 333, 265 N.W.2d 559 (1978). Nor has the petitioner pointed to the source of any such authority.

Department written policy is silent on the compromise of claims due to hardship. The federal FS regulations, however, state as follows:

(7) Compromising claims. (i) As a State agency, you may compromise a claim or any portion of a claim if it can be reasonably determined that a household's economic circumstances dictate that the claim will not be paid in three years.

7 C.F.R. § 273.18(a)(7).

This passage means that the State agency, and its agent sub-part the county agency, retain the authority to consider compromising a FS overpayment claim. I lack any authority under law or caselaw to do so. Rather, the petitioner and his wife may formally request in writing to the agency that it compromise their overpayment claim amount, and if the agency does not, only then may they request a fair hearing at such a future date and event. That issue is not ripe as a matter of law.

### **CONCLUSIONS OF LAW**

- 1) The instant petition for review concerning FS Overpayment Claim No. [REDACTED] is also untimely, and no jurisdiction is present to review it.
- 2) The petition for review does not allege any present computational error in the balance of the Claim remaining due.
- 3) The petitioner has not made a formal request to the Department for a compromise of FS Overpayment Claim No. [REDACTED], so no negative action has been taken on such a request, and no jurisdiction has attached to review such a negative action under 7 C.F.R. §273.15(a) as the appeal issue is not ripe.

**THEREFORE, it is**

### **ORDERED**

That the petition for review herein be, and the same hereby is, dismissed in its entirety.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 19th day of August, 2016

\s \_\_\_\_\_  
Kenneth D. Duren  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on August 19, 2016.

Marinette County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability